THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No.3641 of 2007

Date:10-12-2007

Between:

Ather Alam.

…PETITIONER

And

The Commissioner of Police,
Hyderabad & Cyberabad, and others.

...RESPONDENTS

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THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No.3641 of 2007

ORDER:

This writ petition has been instituted seeking directions to the respondents to close the 'rowdy sheet' against the petitioner at Nallakunta Police Station, Hyderabad. The petitioner, who is a mechanical engineering graduate, hails from a respectable family.

The petitioner asserts that because of the antagonism, the Police have needlessly implicated him in a series of crimes registered principally by Nallakunta Police Station and that he had been acquitted in all the cases except in Crime No.222 of 1990 which is still pending. The petitioner also asserts that a 'rowdy sheet' has been opened against him by Nallakunta Police Station and it is maintained unjustly for the past twenty years, as a result of which he has been subjected to lot of humiliation amongst the social circles apart from suffering an impact on his own personal life and liberty. Therefore, the petitioner has instituted W.P.No.10669 of 2004 in this Court on the previous occasion. This Court by its judgment rendered on 05.10.2005 has disposed of the said writ petition in the following terms:

> "Having regard to the facts and circumstances of the case and particularly in the absence of any

> material to conclusively establish that no cases are pending against the petitioner as on today and no crimes are registered against him after 1990, I am not inclined to record any finding on the said issue. Hence, the Mandamus as prayed for cannot be issued. Instead, I deem it appropriate to direct the respondents to review the case of the petitioner in the light of the principles of law laid down by the Courts from time to time and to pass appropriate orders with regard to the justifiability or otherwise of continuing the rowdy sheet against the petitioner as on today. Such exercise shall be completed and appropriate orders be passed in accordance with law which shall be supported by reasons thereto as expeditiously as possible preferably within a period of eight (8) weeks from the date of receipt of this order and the same shall be communicated to the petitioner. ”

Pursuant to these directions, the respondents have not taken any action to close the ‘rowdy sheet’; on the other hand the Police have foisted another case in Crime No.260 of 2005 of Sultan Bazaar Police Station, Hyderabad.

The learned senior counsel appearing for the petitioner – Sri T. Bal Reddy would urge that the petitioner had not been convicted twice, for him to suffer the indignity of being classified as a rowdy and a ‘rowdy sheet’ to be opened against him. None of the ingredients of Police Standing Order No.601 are attracted in the case of the petitioner and hence, the petitioner is not liable to be characterized as a rowdy and no ‘rowdy sheet’ should be continued against him.

Per contra, the learned Government Pleader for Home contends that the previous Andhra Pradesh Police Manual had been thoroughly revised and the new Andhra Pradesh Police Manual has been brought out in April, 2004, and that departing from the language found in the previous Andhra Pradesh Police Manual Standing Order No.742, the present Andhra Pradesh Police Manual Standing Order No.601 has classified all such persons as rowdies who habitually commit, attempt to commit or abet the commission of offences involving a breach of the peace, disturbance to public order and its security, and therefore, in terms of the present Standing Order No.601, the petitioner has been rightly classified as a rowdy and the 'rowdy sheet' has been appropriately maintained against him. The present Standing Order No.601 reads as under:

> **Rowdies**
>
> **601.** The following persons may be classified as rowdies and Rowdy Sheets (Form 80) may be opened for them under the orders of the SP/DCP and ACP/SDPO.
>
> A. Persons who habitually commit, attempt to commit or abet the commission of, offences involving a breach of the peace, disturbance to public order and security.
>
> B. Persons bound over under Sections 106, 107, 108 (1)(i) and 110 (e) and (g) of Cr.P.C.
>
> C. Persons who have been convicted more than once in two consecutive years under sections 59 and 70 of the Hyderabad City Police Act or under

section 3, clause 12, of the AP Towns Nuisances Act.

D. Persons who habitually tease women and girls and pass indecent remarks.

E. Rowdy sheets for the rowdies residing in one Police Station area but found frequenting the other PSs area, can be maintained at all such Police Stations.

F. Persons who intimidate by threats or use of physical violence or other unlawful means to part with movable or immovable properties or in the habit of collecting money by extortion from shopkeepers, traders and other residents.

G. Persons who incite and instigate communal/caste or political riots.

H. Persons detained under the "AP Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land-Grabbers Act, 1986" for a period of 6 months or more.

I. Persons who are convicted for offences under the Representatives of the Peoples' Act for rigging and carrying away ballot paper, Boxes and other polling material.

It is contended that the case of the petitioner is covered by the sweep of clause A, set out supra.

The learned Government Pleader would also place strong

reliance on the Standing Order No.602 for purposes of continuing the 'rowdy sheet' against the petitioner.

According to the learned Government Pleader a habitual offender or a person habitually addicted to crime is one who is a criminal by habit or by disposition formed by repetition of crimes. Reasonable belief of Police Officer that the suspect is a habitual offender or is a person habitually addicted to crime is sufficient to justify the action of continuing the 'rowdy sheet'.

The question as to whether a person can be classified as a rowdy and consequently a 'rowdy sheet' can be opened against him or not in the context of the previous Police Manual Standing Order No.742 has fallen for consideration before a learned Single Judge of this Court in **Ejaz v. Government of Andhra Pradesh and others**[1]. It is dealt with therein as under:

> "5. Standing Order 742 of the A.P. Police Standing Orders reads as follows:
>
> > "Rowdies:- (1) The following persons may be classified as rowdies and Rowdy Sheets (Form 88) may be opened for them under the order of the Superintendent of Police or Sub-divisional Officer.
> >
> > (a) persons who habitually commit, attempt to commit or abet the commission of offences involving a breach of the peace;
> > (b) persons bound over under Sections 106, 107, 108(c) and 110(1) of the Code of

Criminal Procedure, 1973 (Act No.2 of 1974);

(c) persons who have been convicted more than once in two consecutive years under Section 75 of the Madras City Police Act or under Section 3, clause (12), of the Towns Nuisances Act;

(d) persons who habitually tease women and girls by passing indecent remarks or otherwise; and

(e) in the case of rowdies residing in an area under one Police Station but are, found to be frequently visiting the, area under one or more other Police Stations their rowdy-sheets can be maintained at all such Police Stations.

(G.P.Ms.No.656, Home (Police-D) Dept., dated 8th April, 1971)

(2) Instructions in Order 735 regarding discontinuance of History Sheets shall also apply to Rowdy Sheets."

It is true that the petitioner got himself involved in three criminal cases, but the fact remains that he is acquitted by the Metropolitan Sessions Judge after a full trial, and the security proceedings initiated against him also ended as in his favour, as he was not bound over but he was sent to judicial custody for seven days during trial as stated in the counter-affidavit and in 'the third case, he was arrested under Section 151 Cr.P.C. as a preventive measure. In such circumstances can it be said that the petitioner habitually commit, attempt to commit or abet the commission of offences, involving breach of peace. It is submitted by the learned Counsel on behalf of the

petitioner that no case registered against the petitioner has ended in conviction and therefore, the petitioner cannot be termed to be a habitual offender. According to the learned Counsel for the petitioner, there should be atleast more than two criminal cases and they should have ended in conviction. A plain reading of Police Standing Order No.742 would not support the plea advanced by the learned Counsel for the petitioner. The petitioner, however, relies upon a judgment of this Court in *Majid Babu and another Samdani v. Home Secretary, Govt. of A.P. and others*, 1987(2) ALT 904, in which it is held that:

> "Two instances would not make a person a habitual offender. Atleast more than two instances should be present before a person can be described as a habitual offender. Merely because the two persons are figuring as accused in respect of two crimes registered by Police, no inference can be drawn that they are habitual offenders"

The Court in the said case took note of the fact that though petitioners therein were involved, in grave offences, the first one relate to an offence under Section 307 IPC in respect and of which the crime was registered on 6-4-1987, the second but crime was registered against them on 16-5-1987 but in none of those cases there were allegations involving the petitioners therein in any lawless activities. In such view of the matter, the Court held that Police Standing Order No.742 was not attracted and the petitioners therein should not be said to be rowdies.

It is clear from a plain reading of the Standing Order that no rowdy sheet could be opened against a person

who does not fall within the categories mentioned the Standing Order No.742 (1)(a)to(e) about category of persons mentioned in category (b) to (e) and classifying them as rowdies and opening rowdy sheets against them under the orders of the Superintendent of Police or

Sub-divisional Officer may not create any problem as there is not much of discretion left to the authorities concerned. The problem may arise only in cases where clause (a) is applicable, classifying the persons who habitually commit the offences involving the breach of peace. A plain reading of the provision does not suggest that such persons must have been convicted atleast in more than two cases to make such persons as habitual offenders. In fact the very decision relied upon by the learned Counsel for the petitioner in *Malak Singh v. State of Punjab and Haryana and others*, AIR 1981 SC 760, it is held that:

> "Ordinarily the names of persons with previous criminal record alone are entered in the surveillance register. They must be proclaimed offenders, previous convicts, or persons who have already been placed on security for good behaviour. In addition, names of persons who are reasonably believed to be habitual offenders or receivers of stolen property *whether they have been convicted or not may be entered*, (emphasis supplied). It is only in the case of this category of persons that there may be occasion for abuse of the power of the police officer to make entries in the surveillance register. But, here, the entry can only be made by the order of the Superintendent of Police who is prohibited from delegating his authority under Rule 23.5.

> Further it is necessary that the Superintendent of Police must entertain a reasonable belief that persons whose names are to be entered in Part II are habitual offenders or receivers of stolen property. While it may not be necessary to supply the grounds of belief to the persons whose names are entered in the surveillance register, it may become necessary in some cases to satisfy the Court when an entry is challenged that there are grounds to entertain such reasonable belief."

In *Majid Babu*'s case also my learned brother Hon'ble Sri Justice *M.N.Rao* held that two instances would not make a person a habitual offender and atleast more than two instances should be present before a person can be described as a habitual offender. The learned Judge did not hold that a conviction in more than two cases was necessary for opening a rowdy sheet under Standing Order No.742. I n *Shaik Mahboob Ali v. the Commissioner of Police and others*, 1992(2) ALT 158, this Court while considering the scope of very Order No.742 of the Police Standing Order held that "true whether commission of an offence or attempt to commit an offence could be taken as the relevant factor for the purpose of entering the name of a person in the rowdy-sheet within the meaning of S.O.742, but mere assertion does not lead to the situation that a person attempted to commit an offence."

In Black's Law Dictionary the meaning assigned to habitually' is customarily by frequent practice or use. It does not mean entirely or exclusively' and habitual criminal in the same dictionary is defined as "A

recidivist (q.v). A legal category created by statute in many States by which severe penalties ranging upto life imprisonment can be imposed on criminals convicted of any crime the third of fourth time. In general, habitual offender statutes impose greater sentences on offender for repeated crimes, with life imprisonment being imposed upon commission of several felonies." The Police Standing Order does not refer to any habitual criminal but refers to a person who habitually commit or abets offences involving breach of peace. In such view of the matter, there is no necessity that the person whose name is to be entered into rowdy sheet and classification of such a person as rowdy need not have been convicted. The word 'habit' implies a tendency or capacity resulting from the frequent repletion of the same acts. The words by habits' and habitually' imply frequent practice or use. The word 'habit' means persistence in doing an act, a fact which is capable of proof by adducing evidence of the commission of a number of similar acts. Habitually' must be taken to mean repeatedly or persistently.' (The Law Lexicon)

However, there cannot be any doubt that the Police Officer who is entrusted with the responsibility of classifying the person as a rowdy and opening of rowdy-sheet are under the duty and obligation to consider the applicability of Standing Order strictly and confine the entry in the rowdy-sheet only to such class of persons mentioned in the Standing Order and it is not as if the Police have the power and opportunity to enter the names of whoever they like in the said register. The "expression like 'by habit', 'habitual', 'desperate', 'dangerous', 'hazardous' cannot be flung in the face of a man with laxity of

semantics. The Court must insist on specificity of facts and be satisfied that one swallow does not make a summer and a consistent course of conduct convincing enough to draw the rigorous inference that by confirmed habit, which is second nature.

….Surveillance and monitoring of movements of persons whose names are entered in rowdy-sheets should therefore, be proportionate and commensurate to the reasonable apprehension or suspicion entertained by the concerned Police Officer and only with a view to prevent commission of a crime which may result in breach of peace. Any excessive action on the part of the police would not only be *ultra vires* the Standing Order No.742 but also would be violative of right to equality and right to freedom guaranteed by Articles 14, 19 and 21 of the Constitution of India. Any unauthorised physical restraint or coercion of any sort would be violative of the fundamental right to freedom and personal liberty guaranteed by the Constitution of India. That the right to personal liberty in substance means a person's right not to be subjected to imprisonment, arrest, or other *physical coercion*.

"The right to the safety of one's life and limbs and to enjoyment of personal liberty, in the sense of freedom from physical restraint and coercion of any sort, are the inherent birth rights of a man. The essence of these rights consist in restraining others from interfering with them." (A.K.Gopalan v. State, AIR 1950 SC 27)

I n *Halsbury's* Laws of England the law relating to personal liberty has been stated thus:

> "*Right to personal liberty*: The right to personal liberty and immunity from wrongful detention is

enshrined in Magna Carta and is enforceable by the writ of *habeas corpus* and actions for false imprisonment. A person may be arrested by warrant issued by a justice or, in certain circumstances, without a warrant. If a person is arrested without a warrant, he must be informed of the reason for his arrest and, if retained in custody, he must be brought before a Magistrates' Court as soon as is practicable. Closely concerned with the right to personal liberty is the right to be protected against *unfair or oppressive police methods* in the interrogation of suspects."

Thus the police is under duty to exercise due caution and care in the matter of monitoring the movements and surveillance of every rowdy sheeter and see that the same does not interfere with their day to day normal life."

A similar question was again considered by the learned Single Judge in **Kamma Bapuji v. Station House Officer, Brahmasamudram**[2]. It was held therein as under:

"It is required to notice that characterising and classifying a person as rowdy and opening a rowdy sheet is fraught with serious consequences. The personal liberty, including the privacy of the concerned person would be definitely curtailed to some extent as such persons comes under surveillance where his movements are watched by the police. In practice, it is brought to the notice of the Court, that in many cases, the concerned police officers insist the presence of all rowdy sheeters in the police stations. In such view of the matter, the Court in exercise of its jurisdiction under Article 226

of the Constitution of India is required to strictly scrutinise the action of the police officers in opening the rowdy sheets, who are required to act reasonably and fairly and in an objective manner. Rowdy sheets cannot be opened against any individual in a casual and mechanical manner. It would not be enough to dub a person as habitual offender and open rowdy sheet. Due care and caution is required to be taken by the police officers before characterizing a person as a rowdy. The Apex Court in *Dhanji Ram Sharma v. Superintendent of Police, Delhi*, AIR 1966 SC 1766 observed that*:*

> " A habitual offender or a person habitually addicted to crime is one who is a criminal by habit or by disposition formed by the repetition of crimes. Reasonable belief of the police officer that the suspect is a habitual offender or is a person habitually addicted to crime is sufficient to justify action under Rr.23.4(3) (b) and 23.9(2). Mere belief is not sufficient. The belief must be reasonable, it must be based on reasonable grounds. The suspect may or may not have been convicted of any crime. Even apart from any conviction, there may be reasonable grounds for believing that he is a habitual offender."

In *Vijay Narain Singh v. State of Bihar***,** AIR 1984 SC 1334 the Supreme Court while construing Section 2(d) and 12 of the Bihar Control of Crimes Act (Act 7 of 1981), which provides for definition of anti-social element has observed:

> " A person is a habitual criminal who by force or habit or inward disposition, inherent or latent in him, has grown accustomed to lead a life of crime. It is the force of habit inherent or latent in an individual with a criminal instinct, with a

criminal disposition of mind that makes him dangerous to the society in general. Shorn of verbiage the word 'habitually' means 'by force of habit'. The Act appears to be based on Prevention of Crime Act, 1908 (c.59).

By Prevention of Crime Act, 1908, as amended by the Indictments Act, 1915, a person after three previous convictions, after attaining sixteen years of age could, with the consent of the Director of Public Prosecutions in certain cases, be charged with being a habitual criminal and, if the charge was established, he could, in addition to a punishment of penal servitude, in respect of crime for which he has been so convicted, receive a further sentence of not less than five years or more than 10 years, called a sentence of preventive detention. Upon this question of a man's leading persistently a dishonest or criminal life, where there has been a considerable lapse of time between a man's last conviction and the commission of the offence which forms the subject of the primary indictment at the trial, notice containing particulars must have been given and proved of the facts upon which the prosecution relied for saying that the offender is leading such a life. If, on the other hand, the time between a man's discharge from prison and the commission of the next offence is a very short one, it may be open to the jury to find that he is leading persistently a dishonest or criminal life by reason of the mere fact that he has again committed an offence so soon after his discharge from a previous one, provided the notice has stated this as a ground. This essentially is a question of fact.

The scheme under the English Act, is entirely different where a person has to be charged at the trial of being a habitual criminal. Therefore, the consideration which govern the matter do not arise in the case of preventive detention

under Section 12(2) of the Act."

In the same Judgment, the Apex Court observed that "the Act containing such provisions is a hard law and therefore it should be strictly construed. Care should be taken that the liberty of a person is not jeopardized unless his case falls squarely within the four corners of the relevant law.

In Black's Law Dictionary, the meaning assigned to 'Habitually' is "Customarily; by frequent practice or use. It does not mean entirely or exclusively", and habitual criminal in the same Dictionary is defined as "A recidivist (q.v.). A legal category created by statute in many States by which severe penalties ranging upto life imprisonment can be imposed on criminals convicted of any crime the third or fourth time. In general, habitual offender statutes imposes greater sentences on offender for repeated crimes, with life imprisonment being imposed upon commission of several felonies."

..... A rowdy-sheet can be opened against a person classified as a rowdy, if such person habitually commit, attempt to commit or abet the commission of offence involving breach of the peace. In plain language a person who habitually commit, attempt to commit or abet the commission of offences alone can be classified as a rowdy and rowdy sheet can be opened, provided such offence relates to involving breach of the peace. If the offence even habitually committed, or attempted to be committed or abet commission of the offence, but not involving a breach of the peace, would not enable and authorise the police officer concerned to open rowdy sheet and classify a person as rowdy. It is in this area, a Police Officer has to consider the material available on record and satisfy himself that commission of offence habitually by a person has resulted or is likely to result in breach of peace. The satisfaction is required to be arrived at in an objective

> manner and on the basis of the material available on record."

A Division Bench of this Court had approvingly quoted the ratio in **Kamma Bapuji**'s case in **Puttagunta Pasi v. Commissioner of Police**[3] and held as under:

> "From the above, it is clear that rowdy sheets cannot be opened against any individual in a casual and mechanical manner. Dubbing a person as an habitual offender and to open a rowdy sheet is not sufficient. On the other hand, due care and caution shall be taken by the Police before characterizing a person as a rowdy. The important element that has to be seen in the acts of an offender is whether the acts so committed by a person will have a tendency to disturb public peace and tranquility. In *Kamma Bapuji*'s case (3 supra), the learned single Judge, following the decisions already rendered by the Supreme Court and this Court as cited above, held that opening of a rowdy sheet against the petitioner therein viz., Kamma Bapuji is incorrect."

The same principle has been reiterated by another Division Bench of this Court in **B.Satyanarayana Reddy v. State of Andhra Pradesh**[4].

The expressions 'habit' and 'habitually' have come to be understood to mean a persistent attitude in doing one or similar kind of acts, capable of proof by adducing proper evidence of its commission, not necessarily referable to the frequency of the occasion but rather to the invariability of its practice. A habit must be taken to have

developed into a propensity that is present from day to day. Therefore, great care and caution are required to be exercised on the part of those who have been entrusted with the task of opening and maintaining such rowdy sheets.

Prevention of crime is one of the impelling factors for creation of the Police force. Securing peace and tranquility in the society greatly depends upon the preventive as well as combative abilities of the Police in tackling the potential offenders. Securing sensitive information beforehand plays a major role in maintaining peace and order of the society. Hence a certain degree of surveillance over the movements of notoriously bad characters is employed by the Police. Organised crime cannot be effectively checked without a vigilant eye being fixed on the movements of the potential offenders. But like in the case of every power, even the Police power, of the State has got to be confined to its limits. One of the well recognised limits by civilized societies is that the fundamental freedoms granted and guaranteed by the Constitution should be preserved and protected.

It is hardly in dispute that the surveillance in both visible and invisible forms maintained by the Police on the movements of the individuals against whom the ‘rowdy sheet’ is opened has the characteristics of denying the full flow of freedom and enjoyment and the liberty of such individuals would ultimately get impacted.

Keeping this factor in mind, if we ponder over the contention of the learned Government Pleader, the departure made in the language

contained in the previous Standing Order No.742 and the present Standing Order No.601 does not make much of a calculated difference. As it was already noticed supra the previous Standing Order No.742 enabled the persons, who habitually commit, attempt to commit or abet the commission of offences involved in breach of peace, to be classified as rowdies. The present Standing Order No.601 has gone a step further and sets out the persons, who habitually commit, attempt to commit or abet the commission of offences involving breach of peace, disturbance to public order and its security, as rowdies. So, what has been added anew is the class of offences known as "causing disturbance to public order and its security" to the already existing "offences involving breach of peace". Except adding two more classes or varieties of offences to the list rendering offenders or those who attempt to commit such offences also to be classified as rowdies, the main course of the theme for either classifying or maintaining 'rowdy sheets' between the previous Standing Order No.742 and the present Standing Order No.601 has not charted any new terrain. The essential test, therefore, is that there should have been an objective satisfaction with reference to the credible material/information gathered against the offender that either he was involving in the acts perceived as likely to cause breach of peace of the locality or cause disturbance to public order or its security. In fact the new classes, which have been added to the existing classes in Police Standing Order No.742, have only enlarged the scope for opening the 'rowdy sheets' against two more varieties of offenders, disturbance to public order or its security, have also been

roped in. Those who are attempting or indulging in such new varieties of offences have also rendered themselves susceptible to be classified as rowdies and consequently 'rowdy sheets' to be opened against them. Substantially there was not much at variance between the theme running behind the previous Standing Order No.742 and the present Standing Order No.601.

Before attempting an answer to the question whether there is adequate material before the Police to form a reasonable opinion against the petitioner, it is important to understand the import of the expression "public order" and "security". Hidayatullah.J (as he then was) has said in **Dr. Ram Manohar Lohia v. State of Bihar**[5] at page 758, thus:

> "….The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large….
>
> It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State…."

Again, the Supreme Court in **Arun Ghosh v. State of W.B.**[6] has said:

> "….Public order was said to embrace more of the community than law and order. Pubic order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquility. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Take the case of assault on girls. A guest at a hotel may kiss or make advances to half a dozen chamber maids. He may annoy them and also the management but he does not cause disturbance of public order. He may even have a fracas with the friends of one of the girls but even then it would be a

> case of breach of law and order only. Take another case of a man who molests women in lonely places. As a result of his activities girls going to colleges and schools are in constant danger and fear. Women going for their ordinary business are afraid of being way-laid and assaulted. The activity of this man in its essential quality is not different from the act of the other man but in its potentiality and in its effect upon the public tranquility there is a vast difference. The act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken note of by the criminal prosecution agencies. It means therefore that the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society. The French distinguish law and order and public order by designating the latter as order publique. The latter expression has been recognised as meaning something more than ordinary maintenance of law and order.…"

If we look at the counter-affidavit filed by third respondent in this case in para 5 it has been stated as under:

> "It is respectfully submitted that the allegations made in Para 5 of this Writ Petition are incorrect. The petitioner has not furnished the total cases registered against him and the petitioner is involved in the

following offences on the file of Nallakunta P.S. as well as other police stations.

Cases involved in Police Station Nallakunta

1. Crime No.32/85 U/Sec.147,447,342,506, 427 IPC of PS Nallakunta, Hyderabad.
2. Crime No.44/87 U/Sec.302 IPC of PS Nallakunta, Hyderabad.
3. Crime No.94/89 U/Sec.324,427 IPC of PS Nallakunta, Hyderabad.
4. CrimeNo.97/89 U/Sec.332 IPC of PS Nallakunta, Hyderabad.
5. Crime No.283/89 U/Sec.147, 148, 307 IPC of IPS Nallakunta, Hyderabad.
6. Crime No.81/90 U/Sec.302 IPC of PS Nallakunta, Hyderabad.
7. Crime No.115/92 U/Sec.27 of Arms Act of PS Nallakunta, Hyderabad.
8. Crime No.79/96 U/Sec.8(a&b) of APP Act of PS Nallakunta, Hyderabad.

All the above cases have ended in Acquittal, except Crime No.44/87 wherein the petitioner was convicted and Crime No.79/96 is pending trial.

Cases involved in Other Police Stations

1. Crime No.212/86 U/Sec.147,148, 324, 307 r/w 149, 302 IPC of PS Sultan Bazar, Hyderabad.
2. Crime No.207/90 U/Sec.307, 452, 427 IPC of PS Kachiguda, Hyderabad.
3. Crime No.222/90 U/Sec.27 of Arms Act of PS Chaderghat, Hyderabad.
4. Crime No.125/91 U/Sec.307 IPC of Hussainipalam PS, Hyderabad.
5. Crime No.257/93 U/Sec.307 IPC of PS Rajendranagar, Cyberabad.
6. Crime No.292/2004, U/Sec.307,506 IPC & Sec.25(1) & 27 of Arms Act of PS Saidabad, Hyderabad.
7. Crime No.260/05 U/Sec.399,382, 402, 120-B, 109 IPC and 25(b) & 27 of Arms Act of PS Sultan Bazar, Hyderabad.

8. Petty Case No.37/88 U/Sec.61(a) C.P. Act of PS Humayunnagar, Hyderabad.

It is further submitted that the contention of the petitioner that he was not involved in any crime since 1991 is totally false and incorrect. In recent past the petitioner was involved in Crime No.292/2004 U/Sec.307, 506 IPC & Sec.25(1) & 27 of Arms Act of PS Saidabad, Hyderabad and Crime No.260/05 U/Sec.399, 382, 402, 120-B, 109 IPC and 25(b) & 27 of Arms Act of PS Sultan Bazar, Hyderabad. The petitioner habituated to jumping bail."

But, however it has been stated at the Bar that the petitioner had been acquitted of the Crime No.44 of 1987 as well as Crime No.79 of 1996 on the file of Nallakunta Police Station. It is also stated that he had been acquitted of Crime No.207 of 1990 on the file of Kachiguda Police Station. While the counter-affidavit has set out that he had been involved recently in two different crimes, one in Crime No.292 of 2004 of Saidabad Police Station and another Crime No.260 of 2005 of Sultan Bazaar Police Station, Hyderabad, it does not help in arriving at a definite conclusion that the petitioner can be described as a habitual offender causing disturbance either to the public order or its security. The counter-affidavit has not made any attempt to demonstrate as to how the respondents have rested their conclusion that the petitioner has committed or has been attempting to cause disturbance to the public order or its security. It is no doubt true that the material gathered by the Police in matters of this nature is based upon their essential belief, but that the said belief of the Police must be reasonable.

Unless there are reasonable grounds for believing that one is habitually committing or is likely to commit any offence which has the propensity to cause disturbance to the public order and its security, he cannot be considered or as liable to be classified as a rowdy. Clearly there is no material before the Respondent Police for them to reasonable believe that the petitioner has or has been attempting to cause disturbance to public and or it's security.

It should be stated in all fairness to the learned Government Pleader for Home that this Court, while deciding the previous writ petition, being W.P.No.10669 of 2004, had taken the view that the material existing against the petitioner till then, as not been sufficient enough to classify him to be a rowdy in terms of the previous Standing Order No.742. The new material gathered against the petitioner does not lead one to the conclusion that he is a habitual offender either causing or likely to cause disturbance to public order or its security.

I, therefore, allow this writ petition and direct the Police to forthwith close the 'rowdy sheet' opened against the petitioner. No costs.

NOOTY RAMAMOHANA RAO, J

10th December, 2007

GHN

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[1] 1997(6) ALD 587
[2] 1997(6) ALD 583
[3] 1998(3) ALT 55(D.B.)
[4] 2004(1) ALD (Crl.) 387 (AP)

[5] AIR 1966 SC 740
[6] AIR 1970 SC 1228